

# **W.A.No.811 Of 2008 vs Tamil Nadu Information Commission on 5 August, 2008**

Chennai High Court  
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05..08..2008

CORAM

HON'BLE Mr.JUSTICE A.K.GANGULY, CHIEF JUSTICE  
and  
HON'BLE Mr.JUSTICE F.M.IBRAHIM KALIFULLA

W.A.No.811 of 2008  
and  
M.P.No.1 of 2008  
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Tamil Nadu Road Development Company Limited,  
Rep. by its Director-in-Charge,  
Sindur Panthion Plaza, II Floor,  
346, Pantheon Road, Egmore,  
Chennai - 600 008.

..Appellant.

Vs.

1. Tamil Nadu Information Commission,  
rep. by its Registrar,  
Kamadhenu Super Market 1st Floor,  
No.273, New No.378, Anna Salai,  
Teynampet, Chennai □ 18.

2. Meghna Sukumar,  
8/2, Dharmaraja Koil Street,  
Kilpauk, Chennai - 600 010.

..Respondents.

PRAYER: Appeal filed under Clause 15 of the Letters Patent  
against the order of the learned single Judge dated 17.07.2008 passed in W.P.No.13416 of 2008.

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For Appellant	:: Mr.R.Muthukumarasamy, Senior Counsel For Mr.V.Ramajegadeesan
For Respondent - 1	:: Mr.G.Rajagopalan, Senior Counsel For M/s.S.R.Associates
For Respondent - 2	:: Ms.D.Nagasila

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J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

This writ appeal is directed against the judgment and order dated 17th July, 2008 passed by a learned Judge of the writ Court, whereby the learned Judge was pleased to dismiss the writ petition

and inter alia upheld the order passed by the Tamil Nadu Information Commission dated 21.05.2008, whereby the State Commission, the first respondent herein, held that the appellant is a "public authority" under Section 2(h) of the Right to Information Act, 2005 (herein after referred to as the "RTI Act") and directed the appellant to furnish the required information to the second respondent.

2. The material facts of the case which are not disputed are that the second respondent in her letter dated 21.10.2007 requested the appellant to furnish the following details.

(i) Who are the contractors for constructing the IT corridor?

(ii) Copies of contract agreements with the contractors constructing the IT corridor?

(iii) Copies of documents published by TNRDC or other consultants about the IT corridor?

The appellant refused to furnish those details. The main ground of objection on which the matter was argued before us is that the appellant is not covered under the RTI Act, in as much as it is not a public authority within the meaning of Section 2(h) of the RTI Act. Section 2(h) of the RTI Act defines a public authority as follows:-

'2(h). "public authority" means any authority or body or institution of self-government established or constituted :

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any -

(i) body owned, controlled or substantially financed;

(ii) non-government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.'

3. Learned counsel for the appellant submits that the order of the first respondent dated 21.05.2008 which held that the appellant is a public authority under Section 2(h) of the RTI Act is erroneous and the learned writ court by affirming the said decision committed an error of law. The said error should be corrected by this appeal Court. Learned counsel for the appellant further submitted by referring to the definition under Section 2(h) that the appellant is not established or constituted under the Constitution, by any law of the Parliament or any State Legislature, nor by any notification issued or order made by the appropriate Government. He also submitted that the appellant couldn't be included within the definition of a body owned, controlled or substantially financed, or a non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government. Learned counsel submitted that the appellant is a limited company incorporated under the provisions of the Companies Act in the year 1998 and was jointly promoted by the Tamil Nadu Industries Development Corporation (TIDCO), which is a public sector undertaking, wholly owned by the Government of Tamil Nadu, and M/s. Infrastructure Leasing and Finance Services Limited (IL&FS), which is a non-Government investment company. Thus, both TIDCO and IL&FS have equal stakes in the appellant company having 50% shares. Therefore, it would not fall within the ambit of a public authority under the provisions of Section 2(h) of the RTI Act.

4. When the matter was heard on the first day viz., 28.07.2008, this Court adjourned it to the next day and directed learned counsel for the appellant to file the Memorandum and Articles of Association of the appellant company.

5. Pursuant to such direction, the Memorandum and Articles of Association were filed before this Court. From a perusal of the said Memorandum it appears that the appellant company was incorporation on 28th May, 1998 under the Companies Act as a Public Limited Company, and thereafter, its Memorandum of Association was amended in 1999, as a result the Articles of Association of the appellant company was changed and the promoters of the company became TIDCO and IL&FS. It cannot be disputed that TIDCO is a fully owned government corporation and so far as IL&FS is concerned its share holding is as follows:

1. Life Insurance Corporation of India

27,986,818

26.10 %

2. ORIX Corporation, Japan	25,542,452	23.82 %
3. Housing Development Finance Corporation Limited	14,049,500	13.10 %
4. Abu Dhabi Investment Authority	10,972,278	10.23 %
5. Central Bank of India	9,843,386	09.18 %
6. State Bank of India	8,237,967	07.68 %
7. IL&FS Employees' Welfare Trust & Others	9,667,160	09.01 %
8. UTI-Unit Linked Insurance Plan □ UTI Asset Management Co.Pvt. Ltd.	946,000	0.88 %

Total  
107,245,561  
100.00

6. From a perusal of the aforesaid share holding of IL&FS it appears that a little less than 50% of the shares are held by public sector undertakings or statutory corporation like LIC created by an Act of Parliament. It also appears that as a result of the amendment to the Articles of Association in 1999 the number of Directors of the company shall comprise two Directors nominated by TIDCO and two Directors nominated by IL&FS. It also appears from the Articles of Association, as amended, vide its Clause 118 that the Managing Director of the appellant company shall be nominated by an unanimous agreement between IL&FS and TIDCO, for such period and upon such terms as they may think fit, and the Managing Director so appointed shall exercise substantial powers of management. From Clause 113 of the Articles of Association, it further appears that all important matters must be referred to the Board and can only be effected by a resolution of the Board comprising of the affirmative votes of at least one Director representing TIDCO and one Director representing IL&FS. It is also not in dispute that the Board of Directors of the appellant company consists of the following persons:

Name/Designation	Position
Mr.K.Allaudin, IAS, Secretary (Highways) & Chairman/TNRDC	Chairman
Mr.S.Ramasundaram, IAS Chairman & Managing Director/ TIDCO	Director
Mr.K.R.Viswanathan, Director (Projects)/ TIDCO	Director
Mr.Hari Sankaran, Managing Director/IL&FS	Director
Mr.Pradeep Puri President & CEO/NTBCL	Director
Mr.K.Ramchand President & CEO/IL&FS Transportation Networks Limited	Director

7. It is clear from the aforesaid composition that the Chairman is the Secretary to the Government of Tamil Nadu, and out of the seven Directors two are from Indian Administrative Service and three are nominated by TIDCO, which is a Corporation wholly owned by the Government of Tamil Nadu. There is one Managing Director nominated by IL&FS. There is another Director also nominated by IL&FS. There is only one Director viz., Mr.Pradeep Puri, who is not nominated by either IL&FS or TIDCO, and Mr. N.R.Krishnan, is also a retired IAS and a former Secretary to Government of India.

8. The aforesaid composition of the Board of Directors of the appellant company makes it clear that the appellant company is a body which is controlled by the appropriate Government.

9. Now comes the question whether it is substantially financed by the government. The cost of the project, which is the subject matter of the writ petition, would be about Rs.84.41 crores, which includes the cost of construction of Toll Plaza, contingencies and supervision costs, etc. However, the land acquisition cost of Rs.43 crores has not been included in the project cost. Such cost of land acquisition has obviously been paid by the government. It appears from page 3 of the typed set of papers, which is a Governmental Order issued by the Secretary to the Government of Tamil Nadu, Highways Department, that the appellant company has estimated the project cost at Rs.84.41 crores. Out of the said project cost a sum of Rs.34 crores has been sanctioned to the project by the State Government and the same has been routed through the appellant Company so as to make the project bankable and the appellant company sourced the balance fund of Rs.50.41 crores through loans at competitive rates and tenor. The terms of the loan given by the State Government to the appellant company is to be decided later. It also appears from the said G.O. that under ASIDE Scheme, the Ministry of Commerce and Industry, Government of India has also sanctioned a sum of Rs.12.5 crores for the appellant company for this project, and therefore, the State Government's contribution would be to the tune of Rs.21.5 crores only. As such request was, therefore, made by the Secretary to Government to the CEO of the appellant company to send necessary proposal in that regard. It also appears from the said G.O. that the State Government modified the Detailed Project Report of the appellant company and the said modified report has to be brought in the Concession Agreement to be entered into by the Government with IT Expressway Ltd/appellant company. The CEO of the appellant company was requested to send the necessary draft of the Concession Agreement for the approval of the Government.

10. In the said G.O. the following directions were also given:

'3. The Government direct that the Project for the Improvement of IT Corridor shall be implemented by a Special Purpose Vehicle (viz.) IT Expressway Limited (ITEL), created for this purpose.

4. The Government also direct that the proposed IT Corridor shall be extended from Siruseri to Mahabalipuram and that this portion shall be taken up as Phase - II separately.

5. The Government have also decided to constitute an Empowered Committee to monitor and take appropriate decisions for the implementation of this project. Orders constituting an Empowered Committee are being issued separately.

6. The CEO, TNRDC is requested to take speedy action at every stage to implement the project early.

7. This order issues with the concurrence of Finance Department vide its U.O.No.23/ss(LK)/04, dated 23.01.2004.'

11. It also appears from page - 1 of the typed set that the Government of Tamil Nadu, Highways Department issued G.O.Ms.No.81 dated 24.04.2003 in this regard. The text of the said G.O. is set out below:-

"ORDER:-

The Government have taken a policy decision to improve the road from Madhya Kailash in Sardar Patel Road to Siruseri in Old Mahabalipuram Road. They accordingly direct that special purpose vehicle be formed to improve the road from Madhya Kailash to Siruseri as a world class 6 lane road by mobilizing resources from the project and to maintain the road thereafter.

2. The Chief Executive Officer, Tamil Nadu Road Development Company is requested to send necessary proposal to Government in this regard.

(By Order of the Governor)

A.NAGARAJAN

Secretary to Government"

12. It is clear from the above G.O. that the appellant was implementing the said policy decision of the Government of Tamil Nadu. It is, therefore, very clear that the project of the appellant company was substantially financed by the Government. Apart from that the activities of the appellant company is substantially controlled by the government, both in the composition of the Board of Directors and also in the manner in which the Articles of Association of the appellant company has been amended, and the manner in which the said project has been implemented and monitored by the government by issuing from time to time various G.Os. referred to herein above.

13. It also appears that of the two promoters of the appellant company one (TIDCO) is fully owned government Corporation and the other IL&FS has almost 50% shareholding by the government. The Board of the directors is therefore totally controlled by these two promoters and consists of I.A.S. officers and government officials.

14. In the background of this admitted factual position, this Court is of the opinion that on a reasonable interpretation of Section 2(h) of the RTI Act, the appellant company comes within the meaning of public authority as defined by Section 2(h) of the RTI Act.

15. If we look at the definition of Section 2(h), which has been extracted herein above, it is clear that the appellant company does not come under the provisions of Section 2(h)(a)(b)(c) or (d), but thereafter Section 2(h)(d) of the definition clause uses the word "includes". It is well known that when the word "includes" is used in an interpretation clause, it is used to enlarge the meaning of the words and phrases occurring in the body of the statute. Reference in this connection can be made to G.P.Singh's "Principles of Statutory Interpretation". In the 10th Edition of the said treatise, the learned author formulated that when the word defined is declared to "include" such and such, "the definition is prima facie extensive" (page 175 of the book). In support of the aforesaid formulation, the learned author has referred to a number of decisions. The latest decision referred to in support of the aforesaid proposition was rendered in the case of Associated Indem Mechanical (P) Ltd. Vs. W.B. Small Industries Development Corporation Ltd., (2007) 3 SCC 607. At paragraph - 13 page 614 & 615 of the report, the learned Judges held as follows:-

"..The definition of premises in Section 2(c) uses the word 'includes' at two places. It is well settled that the word 'include' is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. (See Dadji Vs. Sukhdeobabu, (1980) 1 SCC 621; Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd., (1987) 1 SCC 424; and Mahalakshmi Oil Mills Vs. State of A.P., (1989) 1 SCC 164."

16. Therefore, obviously the definition of bodies referred to in Section 2(h)(d)(i) of the RTI Act would receive a liberal interpretation, and here the words which fall for interpretation are the words □controlled or substantially financed directly or indirectly by funds provided by the appropriate Government□.

17. We are here concerned with the interpretation of the definition clause in the RTI Act. The Act has been enacted "in order to promote transparency and accountability in the working of every public authority". In the preamble to the Act, it is made clear that "democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed". From the Preamble to the Act it is clear that revelation of information may cause conflict with the other public interests including efficient operations of the Governments, but the Act has been enacted to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal.

18. The RTI Act thus attempts to inculcate openness in our democratic republic. It has to be accepted that one of the salience of openness in democracy is an access to information about the functioning of the public authorities.

19. While construing whether the Tamil Nadu Newsprint and Papers Ltd. is a public authority under Section 2(h)(d)(i) of the RTI Act, a learned Judge of this Court, while holding it a public authority made certain pertinent observations in R.Anbazhagan, Deputy Manager (Mechanical), Tamil Nadu Newsprint and Papers Ltd. Vs. The State Information Commission reported in CDJ 2008 MHC 1871. Those observations in para - 13 of the judgment run as under:

'Para 13. One of the objectives to this right to information is eradication of ineffective governance and corrupt governance. Corruption is now recognized as violation of human rights. Good transparency practices are essential for good governance and it includes maximum disclosure; obligation to publish; promotion of open government; limited scope of exceptions; minimum costs; processes that facilitate access; open meetings; precedence of disclosure; and protection of whistle-blowers. The civil society must be unrelenting in its efforts to ensure that the government at all levels reaches a reasonable standard in affording public information to the citizens. Sometimes even harmless information is not made available. When what is asked for is just ordinary data, data that any interested tax-paying citizen has a right to know "a human right, even no national secrets that threaten public interest are asked for" it is not furnished. This access to information is more vitally important in developing countries. It is very necessary that the ordinary person is enabled to participate in the processes that affect daily life and he has empowered with the information to play an effective role in policy-making and legislative decision-making. To promote broader political participation, there should be accountability and transparency of government, to prevent the criminalisation of policy, there should be free flow of information. These are the reasons why the Act came into force. The Government should have the will to make the shift from being niggardly in providing access to information. Transparency is essential for a healthy democracy and robust economy'.

This Court is in respectful agreement with the aforesaid opinion expressed by the learned Judge.

20. Learned counsel for the appellant relied on a decision of the Supreme Court in the case of A.K.Bindal and another Vs. Union of India, (2003) 5 SCC 163. That was a decision as to what would mean a government company. On the legal position of a government company, it was held in that decision that the government company cannot be identified with the government itself nor its employees are government servants, and such employees are not entitled to the protection under Article 311 of the Constitution. We are not concerned with the aforesaid question at all in this case. Here we have only to consider whether in the facts and circumstances of the case the appellant company comes within the meaning of public authority as defined under Section 2(h)(d)(i) of the RTI Act. Therefore, the ratio in the aforesaid case has no application.

21. The RTI Act is virtually enacted to give effect to citizen's right to know. Citizen's right to know has been construed by the Hon'ble Supreme Court as emanating from the citizen's right to freedom of speech and expression, which is a fundamental right. So, a legislation, which has been enacted to give effect to right to know, which is one of the basic human rights in today's world, must receive a purposive and broad interpretation.

22. The principle of purposive interpretation has been explained by Chief Justice S.R.Das in Bengal Immunity Co. Ltd. Vs. State of Bihar, AIR 1955 SC 661. In paragraph 22 at page 674 of the report the learned Chief Justice referred to and adopted the principles in Heydon's Case, (1584) 3 Co. Rep 7a(V). Those principles are: -

- (i)What was the common law before the making of the Act.
- (ii)What was the mischief and defect for which the common law did not provide.
- (iii)What remedy the Parliament hath resolved and appointed to cure the disease of the common law, and
- (iv)The true reason for the remedy.

If we go by the aforesaid four principles, it will appear that the constitutional principle of right to know which was virtually a common law principle of universal application was holding the field before

the coming into effect of the RTI Act, inasmuch as the Hon'ble Supreme Court has held that the right to know is a part of the fundamental right to speech and expression and also a part of the fundamental right to life. But, there was no well-structured Act laying down the procedure on how to exercise one's right to know and right to information, which is why the RTI Act came into existence.

23. The RTI Act has also provided a remedy for facilitating the exercise of the right to information and the reason for the remedy is also indicated in the Preamble to the Act. So going by the direction in Heydon's Case, followed by the Supreme Court in Bengal Immunity (supra) such an Act must receive a purposive interpretation to further the purpose of the Act. So any interpretation which frustrates the purpose of RTI Act must be eschewed. Following the said well known canon of construction, this Court interprets the expression "public authority" under Section 2(h)(d)(i) liberally, so that the authorities like the appellant who are controlled and substantially financed, directly or indirectly, by the government, come within the purview of the RTI Act. In coming to the conclusion, this Court reminds itself of the Preamble to the RTI Act which necessitates a construction which will hopefully cleanse our democratic polity of the corrosive effect of corruption and infuse transparency in its activities. In this context, a few lines from Joseph Pulitzer, in a slightly different context, will be very apt and are reproduced hereunder.

"There is not a crime, there is not a dodge, there is not a trick, there is not a swindle which does not live by secrecy. Get these things out in the open, describe them, attack them, ridicule them in the press, and sooner or later public opinion will sweep them away."

24. This Court, therefore, holds that the appellant is a "public authority" within the meaning of Section 2(h)(d)(i) of the RTI Act, and the learned Judge of the writ Court came to a correct conclusion, may be on the basis of some different reasons.

25. We, therefore, do not find any merit in the appeal, and accordingly it is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there will be no order as to costs.

(A.K.G., C.J.) (F.M.I.K., J.)  
05 ..08..2008.

Index: Yes / No  
Internet: Yes / No

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Tamil Nadu Information Commission,  
rep. by its Registrar,  
Kamadhenu Super Market 1st Floor,  
No.273, New No.378, Anna Salai,  
Teynampet, Chennai - 18.

THE HON<sup>BLE</sup> THE CHIEF JUSTICE  
and  
F.M.IBRAHIM KALIFULLA, J.

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